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No. 82-486

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 610 (AFL-CIO), *et al.*,
Petitioners,

v.

PAUL E. SCOTT, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES AS *AMICUS CURIAE*

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INTEREST OF THE AMICUS CURIAE

Incidents of violence against nonunion employees are a serious and recurring problem. Nonunion workers in industries from construction to coal mining have been subjected to violent attacks based upon their decision and efforts to perform their contractual obligations on a nonunion basis. Nonunion employers have been repeatedly subjected to attacks upon their property by individuals and groups protesting a nonunion construction project or the opening of a nonunion mine.

Labor relations and, in particular, violence have been traditional concerns of the government of the United States and of the Federal Courts.[1] Local courts and law enforcement agencies are willing and able to use their powers to protect life and property in most potentially violent situations. However, there are far too many in-

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[1] *See*, National Labor Relations Act, 29 U.S.C. §§ 141-187 (1976).

stances in which the strength of local sentiment prevents these agencies from properly protecting nonunion employers and workers from violence, or from providing them with adequate remedies for injuries sustained.[2] Such situations are particularly difficult where the nonunion group is regarded as a class of "outsiders" as opposed to "local people" who feel that they have some right to the jobs being performed on a nonunion basis. The instant case presents such a situation. In its *en banc* opinion below the Fifth Circuit properly applies existing law, 42 U.S.C. § 1985(3), to give an adequate federal remedy to a group of employers and employees injured by acts of violence inflicted upon them because of their nonunion status. The Chamber is strongly of the opinion that violence, intentional torts against person and property, and other coercive tactics have no place in the labor relations context, and are contrary to the public interest.

The Chamber of Commerce of the United States ("Chamber") is the largest federation of business organizations and individuals in the United States. Its total membership exceeds 235,000, including over 230,000 corporations, partnerships and individuals, as well as over 4,000 state and local chambers of commerce and professional organizations. The Chamber regularly presents its

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[2] As the Fifth Circuit noted in its *en banc* opinion below:

> It should be observed that the National Labor Relations Board has a long-established policy against awarding monetary damages for physical injury and property damage caused by strike or picket line violence for which the union is held responsible. . . .

Scott v. Moore, 680 F.2d 979, 996 n.13 (5th Cir. 1982) (*en banc*) (citations and parentheticals omitted).

Other statutory schemes are equally ineffective. *See, e.g.*, Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §§ 1961-1968 (1976 & Supp. III 1979); The Travel Act, 18 U.S.C. § 1952 (1976); Hobbs Act, 18 U.S.C. § 1951 (1976) and *United States v. Enmons*, 410 U.S. 396 (1973).

members' views to this Court and lower federal courts on issues of major concern to the business community.[3] Many Chamber members are employers and individuals who have been or may be subjected to acts of violence. Many Chamber members occasionally do business in areas where there is some hostility toward the employment of "outsiders." Therefore, Chamber members are vitally interested in the protection of those who have suffered from violence directed at them because they are part of a group that is not affiliated with locally established labor organizations. Thus, with the consent of the parties,[4] the Chamber is appearing as *Amicus Curiae* to urge on behalf of its members that the *en banc* decision of the Court of Appeals for the Fifth Circuit be affirmed.

SUMMARY OF ARGUMENT

I.

The principal issue on appeal is whether Section 1985(3) provides a remedy for injuries sustained by Respondents in an episode of mob violence resulting from a private conspiracy motivated by pervasive regional hostility and ideological animus qualifying as "class-based invidiously discriminatory animus" against nonunion employees and their employer attempting to perform their contractual obligations in "union country" on a nonunion basis. Proper resolution of this issue requires careful analysis of the factors which led the Court to its decision in *Griffin v. Breckenridge*, 403 U.S. 88 (1971), that "all indicators—text, companion provisions, and legislative history—point unwaveringly to § 1985(3)'s coverage of private conspiracies." *Id.* at 101. Analysis of these fac-

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[3] *See, e.g., Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978); *Whirlpool Corporation v. Marshall*, 445 U.S. 1 (1980); *Associated General Contractors of California, Inc. v. California State Council of Carpenters 46, et al.*, 51 U.S.L.W. 4139 (U.S. Feb. 22, 1983).

[4] This brief is filed with the written consent of all parties pursuant to Supreme Court Rule 36.2. Letters signifying consent have been separately filed with the Court.

tors leads inescapably to the conclusion that the court below was correct in finding that the *Griffin* requirements had been met and that Respondents stated a claim for relief under Section 1985(3).

II.

Analysis of the legislative history of the Congressional debates surrounding the Ku Klux Klan Act, of which Section 1985(3) is a part, compels the conclusion that nonunion employees and their employer, as victims of the sort of class-based, invidiously discriminatory animus to which Respondents herein were subjected, constitute a class within the purview of Section 1985(3) as envisioned by the Forty-Second Congress. The Republican Party was in the majority in the Forty-Second Congress which enacted the Ku Klux Klan Act in 1871. The Ku Klux Klan in 1871 was a political organization which used violence as a means of combatting Northern businessmen, "carpetbaggers," Blacks, Northern laborers and Republicans. The political motivations and pervasive regional hostilities of the Klan point unwaveringly to inclusion, under the facts in the case at bar, of the class of nonunion "outsider" employees and their "outsider" employer within the remedial scope of Section 1985(3). Indeed, the class-based, invidiously discriminatory animus of Petitioners herein was precisely of the sort which Section 1985(3) was designed to remedy. *See Cong. Globe*, 42d Cong., 1st Sess. (1871). Regional animus involving violent means to achieve political ends was of particular concern to Republicans in the Forty-Second Congress, because Klan violence was often aimed at coercing Republicans in the Democrat-controlled South to leave that region.

The legislative history also evinces Congressional concern for persons victimized due to their political beliefs and associations and the kind of regional animus which motivated the Klan. Thus, concern for people discriminated against because of their political associations, cou-

pled with concern for the precarious status of Republicans in the South due to pervasive regional hostility, led to enactment of Section 1985(3). In enacting the Ku Klux Klan Act the Forty-Second Congress intended to protect people victimized because of pervasive regional hostility and their economic and political beliefs and associations. The class of nonunion employees and their employer manifestly qualifies as a class whose members are victimized for these same reasons, and who are thus within the statute's remedial scope.

III.

The requisite class-based, invidiously discriminatory animus required by *Griffin* is also present. Discrimination against nonunion employees and their nonunion employer is class-based, invidiously discriminatory animus proscribed by Section 1985(3) where the animus is regional as well as ideological, and manifests itself through violence. The facts presented typify the hatred of craftsmen in the construction industry who choose to associate with and work for nonunion employers on jobs that a union and its members historically regard as theirs. This Court has long recognized the long-standing animus of unionized workers toward nonunion craftsmen in the construction industry. As Justice Douglas noted in his dissenting opinion in *NLRB v. Denver Building and Construction Trades Council*, 341 U.S. 675, 692 (1951), "The employment of union and nonunion men on the same job is a basic protest in trade union history." Recognition of the realities of the workplace in the labor relations context unquestionably supports the holding of the court below that Respondents stated a claim for relief under Section 1985(3).

Each of the cases relied upon by Petitioners is distinguishable from the case at bar. None of those cases involved either the regional animus or the violence which are present in this case. Where the animus involves geographical or cultural phenomena akin to the "pervasive regional hostility" present in this case, and when this

animus manifests itself through violent intentional torts such as assaults, batteries and destruction of property, then this qualifies as class-based discriminatory animus proscribed by Section 1985(3).

Lower court decisions, all progeny of *Griffin*, *supra*, accord broad breadth to the scope of class-based conspiracies which fall within the purview of Section 1985(3). The "evolution of the decisional law" post-*Griffin* should be evaluated in the same light as the Court evaluated the trend of cases subsequent to *Collins v. Hardyman*, 341 U.S. 651 (1950). Evaluation of the decisional law post-*Griffin* leads to the inescapable conclusion that the court below was correct in finding that the class of Respondents falls within the remedial scope of Section 1985(3).

IV.

Respondents' claims under Section 1985(3) seek protection of rights clearly within the ambit of the statute and within the power of Congress to protect. The object of Petitioners' conspiracy was to deprive Respondents of their First Amendment associational rights and rights to engage in interstate commerce, thereby depriving them of equal protection within the meaning of Section 1985(3). The legislative history and evolution of decisional law clearly supports this conclusion. The source of Congressional power to reach the conspiracy of Petitioners herein is conferred by the Commerce Clause, Article I, Section 8 of the Constitution.

ARGUMENT

I. RESPONDENTS' CLAIMS ARE PROPERLY COGNIZABLE UNDER SECTION 1985(3)

A. The Decision of the Court Below is Consistent with the Holding of This Court in *Griffin v. Breckenridge*

An analysis of any claim pursuant to 42 U.S.C. § 1985(3)[5] must naturally begin with this Court's decision in *Griffin v. Breckenridge*, 403 U.S. 88 (1971).

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[5] 42 U.S.C. § 1985(3) (Supp. III 1979).

In that case, the Court, relying upon the language of the statute itself, the statute's legislative history and the meaning attributed by Congress and the courts to analogous statutes, held that Section 1985(3) provides a civil remedy for damages arising from wholly private conspiracies aimed at depriving equal enjoyment of rights secured by the law for all. *Id.* at 102. Petitioners' concern that the court below interpreted Section 1985(3) in a manner which creates a general federal tort law is unfounded given this Court's admonition in *Griffin*:

> The constitutional shoals that would lie in the path of interpreting § 1985(3) as a general federal tort law can be avoided by giving full effect to the congressional purpose—by requiring, as an element of the cause of action, the kind of invidiously discriminatory motivation stressed by the sponsors of the limiting amendments. The language requiring intent to deprive of equal protection, or equal privileges and immunities, means that there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action. The conspiracy, in other words, must aim at a deprivation of the equal enjoyment of rights secured by the law to all.

Griffin v. Breckenridge, 403 U.S. 88, 101-102 (1971) (footnotes and citations omitted). As discussed more fully *infra*, in keeping with this admonition, the court below correctly found class-based, invidiously discriminatory animus from the actions of Petitioners herein.

Petitioners' principal argument is that Section 1985(3) requires some sort of state action as contemplated by the Fourteenth Amendment. In so arguing, Petitioners would have the Court ignore the dictates articulated in *Griffin* that:

> [T]here is nothing inherent in § 1985(3) that requires the action working deprivation to come from the State. See, e.g., *United States v. Harris*, 106 U.S. 629, 643. Indeed, the failure to mention any such requisite can be viewed as an important indication

> of congressional intent to speak in § 1985(3) of all deprivation of "equal protection of the laws" and "equal privileges and immunities under the laws," whatever their source.

Id. at 97.

In reaching the conclusion that Section 1985(3) provides a civil remedy for damages arising from wholly private infringements of constitutional rights "whatever their source," the Court articulated the following four elements as necessary to state a cause of action under Section 1985(3):

> . . . [A complaint must allege that the defendant did:] (1) "conspire or go in disguise on the highway or on the premises of another" (2) "for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws." It must then assert that one or more of the conspirators (3) did, or caused to be done, "any act in furtherance of the object of [the] conspiracy," whereby another was (4a) "injured in his person or property" or (4b) "deprived of having and exercising any right or privilege of a citizen of the United States."

Id. at 102-103. Under the facts herein presented, the court below found that Petitioners' actions satisfied each of these four elements articulated in *Griffin*:

> Griffin's principles indicate the plaintiffs here have made out a cause of action under § 1985(3). The facts of this case clearly embody four of the five elements essential to a successful 1985(3) claim. First, the evidence is sufficient to establish a conspiracy among some of the Council's constituent unions and individual defendants. Second, proof that plaintiffs were assaulted, beaten, and threatened and that property was destroyed establishes the requisite "act in furtherance" of the conspiracy. Third, these acts are indisputably illegal apart from § 1985(3) as required by *McLellan* [*McLellan v. Mississippi Power*

> *& Light Co.*, 545 F.2d 919 (5th Cir. 1977) (*en banc*)]. Fourth, there is evidence of personal injuries, property damage, and economic loss. The only element requiring analysis is the requirement that the conspiracy be for the purpose of depriving a person of the equal protection of the laws or equal privileges and immunities under the laws. This requirement, in turn, has two components: (1) the violation of some protected right and (2) a class-based invidiously discriminatory animus motivating the violation.

Scott v. Moore, 680 F.2d 979, 988 (5th Cir. 1981) (*en banc*).

The court below correctly found that the *Griffin* requirements had been met. Amicus will first present an analysis of the relevant legislative history to place the *Griffin* requirements in the proper historical perspective.

II. THE LEGISLATIVE HISTORY OF SECTION 1985(3) SUPPORTS COGNIZANCE OF RESPONDENTS' CLAIMS

After extensive analysis of the legislative history of the Ku Klux Klan Act, of which Section 1985(3) is a part, this Court in *Griffin* stated, "It is thus evident that all indicators—text, companion provisions, and legislative history—point unwaveringly to § 1985(3)'s coverage of private conspiracies." *Id.* at 101. Further analysis of the legislative history leads inescapably to the conclusion that nonunion employees and their employer, as victims of the sort of class-based, invidiously discriminatory animus to which Respondents herein were subjected, constitute a class within the purview of Section 1985(3) as envisioned by the Forty-Second Congress.

A. The Ku Klux Klan in 1871 Was A Political Organization

The Ku Klux Klan in 1871 was a political organization which used violence as a means of combatting Northern businessmen, "carpetbaggers", Blacks, Northern laborers and Republicans. The political motivations and regional

hostilities of the Klan are especially relevant for determining whether the class of nonunion "outsider" employees and their "outsider" employer are encompassed within the remedial scope of Section 1985(3).

Republicans in the Forty-Second Congress were especially concerned about the political motivations for Klan violence, because Republicans were in the majority in that Congress and Klan violence was often aimed at coercing Republicans in the Democrat-controlled South to leave that region. These concerns prompted the Forty-Second Congress to establish a joint committee to investigate the Klan. The Majority Report of the Senate Select Committee to Investigate Alleged Outrages in the Southern States reported:

> It is clearly established . . . [t]hat the Ku-Klux organization does exist, has a political purpose, is composed of members of the democratic or conservative party, [and] has sought to carry out its purposes by murders, whippings, intimidations, and violence.[6]

The political nature of the problem was repeatedly and vociferously asserted in debates concerning the Ku Klux Klan Act.[7] Republican Congressmen spoke at length regarding the political nature of the Klan. Congressman Stoughton (R-Mich.) described the Klan as having a "political purpose . . . comprised of members of the Democratic or Conservative party," and as achieving its ends through "violence against its opponents." *Cong. Globe*, 42d Cong., 1st Sess. 320 (1971). Congressman Hoar (R.-Mass.) described the Klan as a "secret political conspiracy." *Id.* at 333. Congressman Elliott (R.-S.C.) stated, "the design of the Ku Klux Klan is political." *Id.* at 391. Congressman Roberts (R.-N.Y.) described the Klan as an "organization . . . political in its origins and aims . . . . [T]he victims whose property is destroyed,

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[6] H.R. Rep. No. 1, 42d Cong., 1st Sess. XXX-XXXI (1871).

[7] See *Cong. Globe*, 42d Cong., 1st Sess. (1871); *See also* Avins, *The Reconstruction Amendments Debates*, 484-570 (1967).

whose persons are mutilated, whose lives are sacrificed, are always Republicans." *Id.* at 412-13. Congressman Burchard (R-Ill.) stated: "through their agency the lives and persons of political opponents are doomed to violence and outrage." *Id.* at 312. The record in the House of the Ku Klux Klan debate is thus replete with references to the political motivations for the violent actions of Klan members.[8]

The debate on the Ku Klux Klan Act in the Senate was substantially similar. Republican Senators echoed the sentiments of their House brethren in imputing political designs to Klan violence. Senator Pratt (R-Ind.) remarked that the leading purpose of the Klan "is to punish men for their political opinions." *Id.* at 504. Senator Edmunds (R-Vt.) asserted that the "systematic plan [of the Klan] is not to leave in any of [the Southern] States a brave white man who dares to be a Republican or a colored man who dares to be a voter." *Id.* at 702. Senator Pool (R-N.C.) described the Klan as "a Democratic organization, in the interests of the Democratic Party." *Id.* at 108. Senator Morton (R-Ind.) described the Klan's purposes in a manner which is peculiarly applicable to the facts of the case at bar: "The purpose [of the Klan] is by these innumerable and nameless crimes to drive those who are supporting the Republican party to abandon their political faith and to flee from the State." *Id.* at 252.

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[8] *See, e.g.*, remarks of Congressman McKee (R-Miss.), *id.* at 426 ("The dead and the wounded, the maimed and the scourged, are all, all Republicans."]; Cobb (R-N.C.), *id.* at 437 ("every victim of Ku Klux outrage has been a Republican"); Butler (R-Mass.), *id.* at 443 (Klan is a "political engine in the hands of the [Democratic Party]"; Coburn (R-Ind.), *id.* at 457 (Klan is "political in its nature"); Lansing (R-N.Y.), *id.* at 488 ("the Ku Klux in their crimes are inspired by political zeal"); Blair (R-Mich.), *id.* app., at 72 ("they murder for a difference in political opinions"); Perry (R-Ohio), *id.* app. at 78 (Klans are "organizations in aid of the Democratic party"); Snyder (R-Ark.), *id.* app. at 196 (the "object [of the Klan is] the defeat of Republicanism").

As the foregoing historical analysis reveals, regional animus involving violent means to achieve political ends was of particular concern to the Republican majority in the Forty-Second Congress when it enacted the Ku Klux Klan Act, including Section 1985(3). These debates evince a remarkable similarity between the motivations of the Klan and those of a mob of union members engaged in violent mass picketing against an out-of-state nonunion contractor and its out-of-state nonunion employees. The designs of both are political and regional. The Klan attempted to force Republicans out of the South—the area which they controlled through the conservative Democratic party. Likewise, union members in the Port Arthur area, all members of the constituent local unions of the Sabine Area Building and Construction Trades Council, were endeavoring to force Cross Construction Company and its nonunion employees out of the area—an area which they and their unions controlled. The means by which each attempted to achieve their ends were the same—violence.

B. The Legislative History Evinces Congressional Concern For Persons Victimized Due to Their Political Beliefs and Associations, and Due to the Regional Animus Which Motivated the Klan

A manifestation of the political motivations of the Klan was the regional animus or hostility of Klansmen toward "carpetbaggers," Northern businessmen, Blacks, out-of-town workers and the like. This regional animus is exactly the sort of animus harbored by union workers in a primarily unionized area toward out-of-town, nonunion contractors and their nonunion employees.

These carpetbaggers, Northern businessmen and workers were primarily Republicans who had emigrated South in an attempt to improve their economic circumstances after the Civil War. These Northern emigres often allied themselves with the newly emancipated Black population, which was also a Republican stronghold in the post-Civil War South. They were thus among the classes which the

Forty-Second Congress sought to protect when it enacted the Ku Klux Klan Act.

The concern for these classes and acknowledgement of the regional hostility which existed is evidenced by the statements of several members of Congress. Senator Edmonds (R.-Vt.) chaired the Senate Judiciary Committee at the time, was Senate Manager of the bill, and was thus eminently familiar with its provisions. He explained the bill as follows:

> We do not undertake in this bill to interfere with what might be called a private conspiracy growing out of a neighborhood feud of one man or set of men against another to prevent one getting an indictment in the State courts against men for burning down his barn; but, if in a case like this, it should appear that this conspiracy was formed against this man because he was a Democrat, if you please, or because he was a Catholic, or because he was a Methodist, or because he was a Vermonter, (which is a pretty painful instance that I have in my mind in the State of Florida within a few days where a man lost his life for that reason) then this section could reach it.

Cong. Globe, 42d Cong., 1st Sess. 567 (1871).

As this passage indicates, "the congressional debates evince a hearty regard for persons who are victimized because of their political beliefs and associations." *Scott v. Moore*, *supra* at 992. This 'hearty regard' is evidenced repeatedly throughout the debates. Senator Osborne (R-Fla.) reiterated the necessity to protect "men who have gone to the South from the other states in the lawful and harmless pursuit of their proper vocations." *Cong. Globe*, 42d Cong. 1st Sess. 653 (1971). This concern specifically encompassed workers and craftsmen. Senator Freylinghausen (R-N.J.) stated:

> The journeyman cobbler of New England may wrap his awl and wax and lash on his leather apron and stand in Charleston, or New Orleans, or Savannah, and say "here I will settle in despite of the Constitu-

> tion and of the laws of these States; and I have a right to invoke the power of the nation here to protect me". The mason or the carpenter of New Jersey may put his chisels or his trowels in his carpetbag, and go to any part of the land, and say, 'Here I will stay in despite of the holy horror of those who cry out, 'Adventurer!, 'Scalawag', 'Carpetbagger!'.

Id. at 498. Thus, Northern workers who had moved South in search of economic opportunity were contemplated by the framers of Section 1985(3).

Although the Ku Klux Klan today proclaims itself to be a racial organization, it was principally political in nature in 1871. These political motives and the violent means employed by the Klan to achieve their political ends concerned Republicans in the Forty-Second Congress. These violent attacks on Republicans prompted Congressional concern because they were viewed as manifestations of a pervasive campaign to prevent Republicans from establishing the policies of Reconstruction in the South. Thus, concern for people discriminated against because of their political associations, coupled with the concern for the precarious status of Republicans in the South due to pervasive regional hostility, led the Forty-Second Congress to enact Section 1985(3).

Therefore, in enacting the Ku Klux Klan Act, the Forty-Second Congress intended to protect classes of people victimized because of pervasive regional hostility, and their economic and political beliefs and associations. The class of nonunion employees and their employer manifestly qualifies as a class whose members are victimized for these same reasons. Although the "labor union movement in America was yet to be born when the 42d Congress was in session," *Scott v. Moore*, *supra* at 992, inclusion of the class of nonunion employees and their employer who are discriminated against because of their nonunion and out-of-town status is entirely consistent with the original intent of the framers of Section 1985(3).

III. THE REQUISITE CLASS-BASED, INVIDIOUSLY DISCRIMINATORY ANIMUS IS PRESENT

A. Discrimination Against Nonunion Employees and Their Employer Is Class-Based, Invidiously Discriminatory Animus Proscribed by Section 1985(3), Where the Animus is Regional As Well As Ideological, and Manifests Itself Through Violence

The case law which has developed since this Court's decision in *Griffin v. Breckenridge, supra*, reveals the indefensible nature of Petitioners' claim that Respondents have failed to identify a "class" which is protected by Section 1985(3). In *Griffin*, the Court stated only "that there must be some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' actions" in order for there to be a cause of action under Section 1985(3). *Id.* at 102. Since the discrimination in *Griffin* was racially motivated, the Court did not decide "whether a conspiracy motivated by invidiously discriminatory intent other than racial basis would be actionable under Section 1985(3)." *Id.* at 102, n.9. In the years since *Griffin*, the federal courts have addressed the question of what types of nonracial classes are protected by Section 1985(3).

The facts in this case typify the hatred of nonunion craftsmen which historically has existed in the construction industry. At least as early as the decision in *NLRB v. Denver Building and Construction Trades Council*, 341 U.S. 675 (1951), the courts began to recognize the long-standing animus of unionized building and construction trades members toward nonunion craftsmen in the construction industry. As Justice Douglas said in his dissenting opinion, "The employment of union and nonunion men on the same job is a basic protest in trade union history." *Id.* at 692.[9]

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[9] The animus that Justice Douglas perceived has been repeatedly recognized in the context of a long series of congressional debates on "common situs picketing" legislation and the equally long history of litigation on the same subject. *See, e.g., Proposed Amendments to*

Counsel for the Amicus Curiae know of only four situations other than the present case where Section 1985(3) has been relied upon as a remedy in such situations. Two cases involved industrial construction and construction workers, one coal mine construction, and one immigrant fishermen. In only one instance has the lower court issued a written opinion, and in that case the opinion concerns the denial of the defendants' motion to dismiss.[10] A copy of the Memorandum Opinion in that case is attached hereto as an Appendix. There, the animus was directed against a nonunion out-of-state contractor and its nonunion out-of-state employees who were performing work under a contract to maintain power plants in Baltimore, Maryland which had previously been maintained by Maryland union contractors and union members, most of whom were residents of Baltimore, Maryland. In that case, the class-based discriminatory animus of the Maryland unions and their members against the out-of-state contractor and its employees was alleged to have translated into violent episodes which resulted in personal injuries and property damage—much like the damages suffered by Respondents in the case at bar.

The court below properly recognized the realities of the work place in the labor relations context, and the long-standing animus of union members toward nonunion craftsmen in the construction industry. Recognition of these realities and an understanding of the remedial scope of Section 1985(3) properly led the majority of the Fifth Circuit to hold that Section 1985(3) encompasses a private conspiracy involving regional animus against nonunion employees and their employer.

NLRA, Hearings on S-294, Before the Subcommittee on Labor, 95th Cong., 1st Sess. 45 (1977) (Statement of AFL-CIO official Robert A. Georgine: "In the *Denver* case, the dissenting Justices correctly observed that: 'The employment of union and non-union men on the same job is a basic protest in trade union history.' ")

[10] *Daniel Construction Company, et al. v. Baltimore Building and Construction Trades Council, et al.*, No. R-81-1074 (D. Md. filed April, 1981).

The court below was carefully precise in its holding:

> Our decision does not hold or imply that every union-nonunion controversy can create a section 1985(3) cause of action. Neither does it hold or imply that every instance of violence arising in the context of a dispute about employment will necessarily do so. . . . Neither unionism nor nonunionism suffices to create a covered class. But where, as here, there is no campaign to organize employees and force or violence is used to stake out one group's territorial claim and to deprive other workers and their employer of the right to freely associate with one another, a section 1985(3) action will lie.

Scott v. Moore, supra at 995-996. The persuasive reasoning of the court below and the precise nature of its holding renders the attempts of Petitioners to discredit it spurious.

B. Cases Relied Upon By Petitioners Are Distinguishable

Petitioners quote liberally from *Great American Federal Savings & Loan Ass'n v. Novotny*, 442 U.S. 366 (1979), for the proposition that Section 1985(3) cannot encompass a statutorily created right. The court in *Novotny* held that a right created by Title VII could not be asserted under Section 1985(3). To hold otherwise in that case would have allowed the plaintiff to bypass the statutory plan and administrative mechanism created by Congress. *Id.* at 375-76. However, as the court below stated in this case, "Because the litigants here have not attempted to assert a right created by the National Labor Relations Act, the concerns expressed in *Novotny* are inapposite to this case." *Scott v. Moore, supra* at 996, n.12.

Thus, *Novotny* is distinguishable because plaintiff therein asserted a statutory claim, and a statutory, administrative scheme exists under Title VII for cognizance and relief of a litigant's claims. No such scheme exists in the case at bar. Nor is a statutory right asserted by Respondents herein.

The National Labor Relations Board has a long-established policy against awarding monetary damages for physical injury and property damage caused by strike or picket line violence for which a union is responsible. *See, e.g., Union de Tronquistas Local 901 (Lock Joint Pipe & Co.)*, 202 N.L.R.B. 399 (1973); *District 1199 National Union of Hospital and Health Care Employees (Frances Scherver Home and Hospital)*, 345 N.L.R.B. 105 (1979). As further discussed *infra*, the rights asserted by Respondents herein are associational freedoms derived from the First Amendment and rights derived from the Commerce Clause.

Petitioners also place heavy reliance upon *Silkwood v. Kerr-McGee Corp.*, 637 F.2d 743 (10th Cir. 1980) *cert. denied*, —— U.S. ——, 102 S.Ct. 132, *Browder v. Tipton*, 650 F.2d 1149 (6th Cir. 1980), and *Dombrowski v. Dowling*, 459 F.2d 190 (7th Cir. 1972). Each is distinguishable from the case at bar, because none of these three cases involved violence or regional animus of the sort involved herein.

The Complaint in *Kerr-McGee* alleged that defendants had formed a conspiracy to prevent Silkwood and other employees from organizing a labor union. *Silkwood v. Kerr-McGee, supra* at 745. No allegations of intentional torts or property damage, violence or any discriminatory animus involving regional hostilities appear in the Complaint. Nor were these factors evaluated in that court's decision. Therefore, despite its initial appearance of applicability, *Kerr-McGee* has no real relevance to the case at bar. Under the historical analysis presented *supra*, violence must be a manifestation of the animus in order for it to qualify for coverage under Section 1985(3). The legislative history is replete with references to violence and intentional torts involving assaults, batteries and property damage. Violence of the sort contemplated by the Forty-Second Congress was present in the case at bar, which renders *Kerr-McGee* distinguishable and arguably irrelevant for purposes of this case.

The facts in *Dombrowski* involved arbitrary business discrimination by a corporate landlord and its agents against lawyers engaged in the practice of criminal law. Essentially, the defendants in that case refused to rent office space to Plaintiff because a substantial number of Plaintiff's clients were Black or of Hispanic origin. In addition to finding that the requirement of Section 1985(3) that "two or more persons . . . conspire or go in disguise on the highway" had not been met, the Seventh Circuit held that arbitrary business discrimination against lawyers engaged in the practice of criminal law did not deprive the plaintiffs of "equal protection" under Section 1985(3) absent state involvement. *Id.* at 196. No intentional torts, assaults, batteries, property damage, or violence of any kind were present in *Dombrowski.* Nor is there any discriminatory animus involving regional hostility such as that presented in the case at bar.

Likewise, *Browder* is distinguishable due to the lack of violence. The issue in that case was "whether causing the false arrest of an adversary in a labor dispute violates the provisions of . . . § 1985(3)." In *Browder,* there was no violence, property damage, nor the sort of regional hostility which is present in this case. Although there was no "political or sectional animus" present in *Browder, supra,* the court below in this case was confronted with facts involving mobs of union members engaging in assaults, batteries and property damage, and "pervasive regional hostility toward nonunion employees" performing construction work in "union country." The facts of *Browder* involved neither the regional animus nor the violent manifestations of the class-based, discriminatory animus present in this case.

For these reasons, the *Novotny, Kerr-McGee, Dombrowski* and *Browder* cases, upon which Petitioners place heavy reliance, are distinguishable. It is the position of Amicus that where the animus involves geographical or cultural phenomena akin to the "pervasive regional hos-

tility" present in the case at bar, and when this animus manifests itself through violent, intentional torts such as assaults, batteries and property damage, then this manifestly qualifies as class-based, discriminatory animus proscribed by Section 1985(3).

C. Lower Court Decisions, All Progeny of *Griffin v. Breckenridge*, Accord Broad Breadth to the Scope of Class-Based Conspiracies Which Fall Within the Purview of Section 1985(3)

Petitioners assert that the class-based, invidiously discriminatory animus required by *Griffin* is not present in the instant case. Petitioners would have the Court ignore the growing and well-reasoned body of case law, all progeny of *Griffin*, according protection under Section 1985(3) to classes whose members are discriminated against because of regional animus or their political beliefs or associations. As discussed *supra*, inclusion of these claims within the scope of Section 1985(3) is consistent with the original intent of the framers of the Ku Klux Klan Act.

Classes which have been held to be protected by Section 1985(3) include the following: professors who talk to or associate with the CIA, *Selzer v. Berkowitz*, 459 F. Supp. 347 (E.D.N.Y. 1978); local unions, *Local 1 (ACA) Broadcast Employees v. International Brotherhood of Teamsters*, 419 F. Supp. 263 (E.D. Pa. 1976) *aff'd in part and rev'd in part on other grounds*, 614 F.2d 846 (3d Cir. 1980); demonstrators, *Philadelphia Yearly Meeting of the Religious Society of Friends v. Tate*, 519 F.2d 1335 (3d Cir. 1975), *Glasson v. City of Louisville*, 518 F.2d 899 (6th Cir. 1975), *cert. denied*, 423 U.S. 930, *Brown v. Villanova University*, 378 F. Supp. 342 (E.D. Pa. 1974); supporters of a political candidate, *Cameron v. Brock*, 473 F.2d 608 (6th Cir. 1973), *Puentes v. Sullivan*, 425 F. Supp. 249 (W.D. Tex. 1977), *Means v. Wilson*, 522 F.2d 833 (8th Cir. 1975), *cert. denied*, 424 U.S. 958 (1976), persons voting for a sham candidate, *Smith v. Cherry*, 489 F.2d 1098 (7th Cir. 1973), *cert. denied*, 417 U.S. 910 (1974); wor-

shippers at a predominantly white Catholic Church disrupted by human rights demonstrators, *Action v. Gannon*, 450 F.2d 1227 (8th Cir. 1971) (*en banc*); persons attempting to furnish advice, information, services to migrant workers in agricultural labor camps, *Franceschina v. Morgan*, 346 F. Supp. 833 (S.D. Ind. 1972); victims of sex discrimination, *Hodgin v. Jefferson*, 447 F. Supp. 804 (D. Md. 1978), *Curran v. Portland Superintending School Committee*, 435 F. Supp. 1063 (D. Me. 1977), *Beamon v. W.B. Saunders Co.*, 413 F. Supp. 1167 (E.D. Pa. 1976), *Reichardt v. Payne*, 396 F. Supp. 1010 (N.D. Cal. 1975), *aff'd sub nom. Life Insurance Co. of North America v. Reichardt*, 591 F.2d 499 (9th Cir. 1979); and victims of religious discrimination, *Marlowe v. Fisher Body*, 489 F.2d 1057 (6th Cir. 1973), *Action v. Gannon, supra*; *Rankin v. Howard*, 457 F. Supp. 70 (D. Ariz. 1978), *rev'd on other grounds*, 633 F.2d 844 (9th Cir. 1980), *cert. denied*, 101 S.Ct. 2020; *Baer v. Baer*, 450 F. Supp. 481 (N.D. Cal. 1978); *Ward v. Connor*, 657 F.2d 45 (4th Cir. 1981), *cert. denied*, —— U.S. ——, 102 S.Ct. 1253 (1982).[11]

As the Court in *Griffin* noted with respect to *Collins v. Hardyman*, 341 U.S. 651 (1950):

> it is clear, in light of the decisional law in the years that have passed since that case was decided, that many of the constitutional problems there perceived simply do not exist. Little reason remains, therefore, not to accord to the words of the statute their apparent meaning. That meaning is confirmed by judicial construction of related laws, by the structural setting of § 1985(3) itself, and by its legislative history.

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[11] The court below noted that it found two types of classes within the protection of § 1985(3): (1) classes "having common characteristics of an inherent nature"—i.e., those classes afforded special protection under the equal protection clause; and (2) classes whose members are discriminated against because of their political beliefs or associations. *See, Kimble v. D. J. McDuffy, Inc.*, 648 F.2d 340 (5th Cir. 1981) (*en banc*); *Scott v. Moore, supra* at 991-992. The Fifth Circuit placed Respondents herein in the second category. *Id.* at 992.

Griffin v. Breckenridge, supra at 95-96. The 'evolution of the decisional law' post-*Griffin* should be evaluated in the same light as the Court evaluated the trend of cases post-*Collins*. This evaluation will lead the Court to affirm the decision of the court below.

The foregoing line of cases, all progeny of this Court's decision in *Griffin v. Breckenridge, supra*, support the decision of the Fifth Circuit that the class of nonunion employees and their employer fall within the scope of Section 1985(3), where regional union animus qualifying as class-based discriminatory animus exists and violence is employed to force the nonunion employer and its nonunion employees to leave the area.

IV. RESPONDENTS' CLAIMS UNDER SECTION 1985(3) SEEK PROTECTION OF RIGHTS CLEARLY WITHIN THE AMBIT OF THE STATUTE AND WITHIN CONGRESS'S POWER TO PROTECT

The second element of the *Griffin* test, the requirement that the conspiracy be for the purpose of depriving Plaintiffs of the equal protection of the laws or equal privileges and immunities under the laws, is the only element seriously contested by Petitioners. This element requires consideration of two lines of inquiry: (1) whether plaintiffs have alleged violation of a protected right, and (2) whether the requisite class-based, invidiously discriminatory animus is present. *Griffin v. Breckenridge, supra* at 102. Amicus has presented its analysis of the class-based animus requirement. Amicus will now show the Court that Respondents herein have alleged violation of protected rights.

The resolution of this line of inquiry involves two concomitant legal questions: (A) whether the right affected by an unlawful conspiracy is one Congress purported to reach under Section 1985(3); and (B) assuming the answer to this question is in the affirmative, whether Congress constitutionally has the power to reach and provide a means of redress for such a right. *See Griffin v. Breckenridge, supra* at 104.

The Complaint herein clearly avers a conspiracy to violate fundamental freedoms Congress intended to reach in Section 1985(3) and rights constitutionally within Congress' power to protect.

A. The Protected Rights

In *Griffin*, the Court stated that a Section 1985(3) conspiracy "must aim at a deprivation of the equal enjoyment of rights secured by the law to all." 403 U.S. at 102. Respondents herein successfully contended below that the object of the conspiracy of Petitioners was to deprive them of First Amendment associational rights, and that deprivation of these associational rights deprived them of equal protection within the meaning of Section 1985(3) as interpreted by the Court in *Griffin*.

In upholding Respondents' claims of violation of First Amendment rights the court below stated, "so long as *Griffin* remains viable, we are bound by its determination that section 1985(3) reaches all deprivations of equal protection, whatever their source." *Scott v. Moore*, *supra* at 990. This is a correct interpretation of the law.

Although the right of association was not specifically discussed in the debates surrounding passage of the Ku Klux Klan Act, two types of associational rights are frequently mentioned: political associational activities and commercial association. As delineated *supra* in the section which discusses legislative history, the debates are replete with references to the Klan as a political organization and the rights of persons to engage in political association. Similarly, the concern of the Forty-Second Congress with economic association was manifest through the repeated references to carpetbaggers, northern workers and businessmen who had moved South in an effort to improve their economic circumstances. Thus, economic and political association were concerns of the Forty-Second Congress when its members drafted Section 1985(3).

The Court has repeatedly recognized that association for the purpose of advancing economic, as well as politi-

cal and religious, interests falls within the protection of the First Amendment. *See Brotherhood of Railroad Trainmen v. Virginia*, 377 U.S. 1, 8 (1964); *Thomas v. Collins*, 323 U.S. 516, 531 (1945); *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977) (where the Court recognized that the corollary of the First Amendment's right to associate to advance economic interests is the right *not* to associate). As the court below correctly noted:

> The conspiracy in the case at bar sought to deny completely the plaintiff employees' right not to associate. The district court found that several truckloads of men assaulted the plaintiffs and "threatened to continue violent actions if the nonunion workers did not leave the area or concede to union policies and principles." The conspiracy was intended to deny the nonunion employees their right not to associate either by driving them out of the county or coercing them to unionism through violence. The defendants sought not merely to force plaintiffs to give financial support to a union (an act which *Abood* recognized could interfere with a person's freedom not to associate), but also to force Cross's employees to become union members or leave an area which had been staked out as "union country." The purpose of the conspiracy was to deprive the plaintiffs of a protected right.

Scott v. Moore, *supra* at 990-991. (footnotes omitted). The Fifth Circuit correctly identified the rights protected as those deriving from the First Amendment—the right to associate with other nonunion employees. The rights of Cross Construction Company, as employer-plaintiff, are discussed *infra*.

B. The Source of Congressional Power

In *Griffin* the Complaint alleged violation of several enumerated rights, including rights to freedom of speech, movement, association and assembly; right to petition the government for redress of grievances; rights to be secure in person and home; and right not to be enslaved nor de-

prived of life and liberty without due process. 403 U.S. at 90. The Court found the Thirteenth Amendment and the constitutional right to interstate travel authorized Congress's reach of the private conspiracy in that case. However, the *Griffin* Court cautioned, "In identifying these two constitutional sources of Congressional power, we do not imply the absence of any other." *Id.* at 107. The court below rejected the Thirteenth Amendment and the right to interstate travel [12] as the bases for Respondents' Section 1985(3) action, and upheld the action based upon the Commerce Clause, Article I, Section 8 of the Constitution. *Id.* at 997.

It has long been recognized that citizens of the United States have a constitutional right to engage in interstate commerce. Thus, in *Crutcher v. Commonwealth of Kentucky*, 141 U.S. 47, 57 (1891), the Supreme Court recognized:

> To carry on interstate commerce is not a franchise or a privilege granted by the states; it is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States.

Moreover, the law is well established that the Commerce Clause, Article 1, Section 8, Clause 3 of the Constitution, empowers Congress to enact legislation regulating purely private conduct, including activity of labor groups, affecting interstate commerce. *See, e.g., Katzenbach v. McClung*, 379 U.S. 294 (1964); *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 258

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[12] It is the position of Amicus that the right of interstate travel could, under the facts presented, serve as a proper basis for the Section 1985(3) action in the case at bar. However, the Fifth Circuit's finding that the Commerce Clause adequately supports the claims of Respondents is sufficient for purposes of Amicus' arguments herein. Amicus states that *both* the right to interstate travel as well as the right to engage in interstate commerce serve as adequate bases for the Section 1985(3) claims of Respondents herein.

(1964); and *National Labor Relations Board v. Jones & Laughlin Steel Corporation*, 301 U.S. 1, 43 (1937).

Petitioners do not contest that Respondents were engaged in interstate commerce. Contentions in their brief are that the Commerce Clause is an inappropriate basis for a Section 1985(3) action.

As the Court held in *Griffin*, the Forty-Second Congress intended to protect the rights to travel and freedom of association against violent, private infringements. As discussed *supra*, classes which the Forty-Second Congress envisioned included carpetbaggers, Northern businessmen, and the like who were engaging in interstate commerce. Thus, the Congressional concern entailed the protection of citizens from private infringements upon their rights to engage in interstate commerce.

The Commerce Clause has served as the basis for enforcing the Civil Rights Act of 1964 against private conspiracies. *See, e.g., Heart of Atlanta Motel v. United States, supra*; *Katzenbach v. McClung, supra*. As the majority below eloquently reasoned:

> It cannot be denied that the aim of protecting interstate commerce from undue burdens is a legitimate end. Congress could reasonably have determined that violent attacks and vandalism perpetrated on the workers of a construction firm engaged in interstate commerce would have a disruptive effect on the flow of products and services among the states. It is also beyond dispute that the aim of protecting interstate workers in the exercise of their First Amendment associational freedoms is a legitimate end. The means adopted for the accomplishment of these ends, a private civil remedy for damages, is plainly reasonable and appropriate. Section 1985(3) as applied to the facts before us is not prohibited by the Constitution and is compatible with both its letter and its spirit. Whether section 1985(3) can constitutionally be applied to other kinds of wholly private conspiracies

to deprive persons of their civil rights is a question for another day.

Scott v. Moore, *supra* at 998.

Similarly, the standing of Cross Construction Company to sue under Section 1985(3) is supported by these authorities.

C. The Employer is an Appropriate Plaintiff

Petitioners' contention that Cross Construction Company lacks standing under Section 1985(3) ignores a well-settled body of case law recognizing the right of corporations to seek protection afforded by the Civil Rights Acts. *See, e.g., Des Vergnes v. Seekonk Water District*, 601 F.2d 9, 16 (1st Cir. 1979) ("It does not matter that Heritage is not an individual. Corporations are persons whose rights are protected by 42 U.S.C. § 1983, ... [citation omitted]. They are also persons who, under the Fourteenth Amendment, have a constitutional right to the equal protection of the laws."); *Fulton Market Cold Storage Company v. Cullerton*, 582 F.2d 1071, 1079 (7th Cir. 1978), *cert. denied*, 439 U.S. 1121 ("It should be noted that the fact that the plaintiff in this suit [claim under 42 U.S.C. § 1983] is a corporation is of no legal significance . . . a corporation is a 'person' within the meaning of the equal protection and due process of law clauses of the Fourteenth Amendment." [citations omitted]); *Sawmill Products, Inc. v. Town of Cicero, Cook County, Illinois*, 477 F. Supp. 636, 638 (D. Ill. 1979) (Sawmill Products Corporation is a person for purposes of equal protection and due process clauses of the Fourteenth Amendment and, therefore, held to have standing under 42 U.S.C. §§ 1983 and 1985(3)); *Mother Goose Nursery Schools, Inc. v. Sendak*, 502 F. Supp. 1319, 1324 (N.D. Ind. 1980) (In action brought by corporation under 42 U.S.C. § 1983, the Court stated: "[A]s a corporation, the plaintiff has all the rights and privileges afforded a person and can sue for deprivation of rights secured by the Constitution and laws." [citations omitted]).

Among the rights deprived by Petitioners' unlawful conduct were the associational freedoms of Cross Construction and its employees. The authorities quite clearly establish that a corporation enjoys the Constitutional guarantees provided in the First Amendment, *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 820 (1978), and that a corporation is entitled to seek judicial relief on its own behalf as well as on behalf of its employees, to protect the latter's Constitutional rights including their freedom of association. *See, NAACP v. Alabama*, 357 U.S. 449 (1958); *Buckley v. Valeo*, 424 U.S. 1 (1976); and *International Union, United Automobile, Aerospace and Agricultural Implement Workers, et al. v. National Right to Work Legal Defense and Educational Foundation, Inc.*, 590 F.2d 1139, 1152 (D.C. Cir. 1978).

In addition to the associational freedoms enjoyed by corporations, Petitioners interfered with Cross Construction's right to engage in interstate commerce. Since *Crutcher v. Kentucky, supra*, the Court has repeatedly recognized and upheld the right of a corporation to engage in interstate commerce. *See, e.g., Oklahoma v. Kansas Nat. Gas Co.*, 221 U.S. 229, 235 (1911) ("The right of a citizen of the United States to carry on interstate commerce is a privilege guaranteed by the Federal Constitution, and is enjoyed without distinction by corporations engaged in interstate commerce as well as individuals . . . [citations omitted]." *Heyman v. Hays*, 236 U.S. 178 (1915); and *Anglo-Chilean Nitrate Sales Corp. v. Alabama*, 288 U.S. 218 (1933). Thus, Cross Construction Company's right to engage in interstate commerce unquestionably exists and clearly suffices to support a claim under Section 1985(3).

CONCLUSION

As discussed herein, the experience of Cross Construction and other nonunion employers and employees is a recurring problem of serious proportions. Respondents herein were subjected to pervasive regional hostility and

ideological animus which manifested itself through violent means, including intentional torts such as assaults, batteries, and property damage. The mechanism recognized by the court below is an appropriate means for providing redress for personal injuries and property damages resulting from violence. It was the intention of the Forty-Second Congress to protect Northern carpetbaggers and businessmen emigrating to the South in search of economic opportunities. Similarly, nonunion contractors and their nonunion employees seeking to work in primarily unionized areas are equally entitled to protection of their rights against violence, which has a disruptive effect upon and unduly burdens interstate commerce.

For the foregoing reasons and those stated in Respondents' Brief, the Chamber respectfully urges that the judgment of the Court of Appeals for the Fifth Circuit sitting *en banc* be affirmed.

Respectfully submitted,

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March 18, 1983

APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

Civil Action No. R-81-1074

DANIEL CONSTRUCTION COMPANY, a Division of Daniel International Corporation, DOUGLAS L. MANTURANO, CLYDE MASSEY, JIMMY M. MASSEY, ROBERT GENE SPENCER, ERNEST JOHNSON,

Plaintiffs

v.

BALTIMORE BUILDING & CONSTRUCTION TRADES COUNCIL, *et al.*

Defendants

MEMORANDUM AND ORDER

Daniel Construction Co., a South Carolina corporation authorized to do construction contracting in Maryland, and five employees of Daniel, all residents of South Carolina, sue the Baltimore Building and Construction Trades Council (Trades Council), three of its constituent labor organizations (Local 438, Local 16 and Local 37), the business agents of Local 438 and Local 16, and various unidentified individuals and labor organizations for alleged interference with a contract entered into by Daniel on February 1, 1981, to perform maintenance services and other work for Baltimore Gas and Electric Company (BG&E) at various facilities in the Baltimore area. Daniel claims that defendants opposed the contract from its outset because (1) Daniel employees are not represented by any labor union and (2) Daniel is an out-of-state contractor with many employees who are not residents of Maryland.

Specifically, plaintiffs allege that on the morning of April 16, 1981, defendants, and others acting pursuant

to defendants' directions, picketed the entrances of the BG&E plants at Riverside and Wagner in order to prevent Daniel and its employees from performing the work which they had contracted to do. On the morning of April 16, 1981, defendants allegedly assaulted and battered plaintiffs C. Massey, J. Massey, Spencer and Johnson at the Wagner plant and forced them to leave the state. On May 16, 1981, defendants and their representatives allegedly assaulted and battered plaintiff Manturano while he was working at the North Cliff facility of BG&E. Additionally, defendants have allegedly caused "thousands" of their agents and others to throw rocks at Daniel vehicles and employees, block roads leading to the construction sites at Wagner Station, Riverside and Notch Cliff, and built rock walls preventing ingress to and egress from the BG&E facilities. Because of the massive nature of the demonstration against Daniel and its employees, State and County Police were allegedly unable to protect plaintiffs.

Plaintiffs' amended complaint states nine claims for relief:

Count 1 asserts that, in violation of the Civil Rights Act of 1871, 42 U.S.C. § 1985(3), defendants conspired to deprive Daniel and its employees of equal protection of the laws and privileges and immunities guaranteed under the Constitution. Specifically, defendants allegedly interfered with plaintiffs' right to engage in interstate commerce, right to travel and right to freely associate with fellow non-union employees.

Count 2 alleges that defendants failed to prevent the unlawful conduct complained of in Count 1, in violation of 42 U.S.C. § 1986.

Counts 3 and 4 are pendent state claims for intentional interference with contractual relations and interference with plaintiffs' right to pursue a lawful business.

Counts 5 through 9 are claims by individual plaintiffs for assault and battery.

Jurisdiction of this Court allegedly exists under 42 U.S.C. § 1985(3), 28 U.S.C. 1343(1), (2), and (3) and under 28 U.S.C. 1332, based on diversity of citizenship of the parties.

Plaintiffs request an injunction against further interference with their constitutional rights by defendants and an injunction restraining defendants from further picketing. They also request compensatory and punitive damages.

Presently before the Court is defendants' motion to dismiss. The motion has been extensively briefed by both parties and the Court heard oral argument by counsel on January 20, 1982. For the reasons stated below, defendents' motion will be denied.

Class-Based Animus

Section 1985(3), under which plaintiffs' bring their constitutional claims, imposes civil liability on persons conspiring to deprive another person or class of persons of "the equal protection of the laws, or of equal privileges and immunities under the law."[1] In 1971, the Supreme Court broadened the applicability of the statute by removing the judicially imposed prerequisite that the alleged deprivation involved state action. A civil remedy was thus provided for damages against wholly private

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[1] Section 1985(3) reads, in relevant part:

> If two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws . . . in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

infringements of constitutionally protected rights. *Griffin v. Breckenridge*, 403 U.S. 88 (1971). The Court in *Griffin* noted, however, that Section 1985(3) was not meant to cover *all* tortious, conspiratorial interferences with the rights of others, but requires "that there must be some racial or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action. The conspiracy, in other words, must aim at a deprivation of the equal enjoyment of rights secured by the law to all." *Id.* at 102. The Court then delineated the four elements which a plaintiff must establish in a Section 1985(c) action:

> To come within the legislation a complaint must allege that the defendants did (1) "conspire . . ." (2) "for the purpose depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws." It must then assert that one or more of the conspirators (3) did, or caused to be done, "any act in furtherance of the object of [the] conspiracy," whereby another was (4a) "injured in his person or property" or (4b) "deprived of having and exercising any right or privilege of a citizen of the United States."

Id. at 102-103.

Having reviewed the facts alleged here, the Court finds that of the four elements required under *Griffin*, three are clearly met and only the requirement that the conspiracy be for the purpose of depriving a person of the equal protection of the laws or equal privileges and immunities under the laws requires analysis. This requirement has two components: (1) a *class-based*, indiviously discriminatory *animus* motivating (2) conduct which violates some *protected right*. Defendants argue that plaintiffs' action must be dismissed because discrimination based on the non-union status of employees does not constitute the "class-based invidiously discriminatory animus" re-

quired as a motivating factor for conspiratorial acts in violation of § 1985(3).[2] *Griffin v. Breckenridge*, 403 U.S. 88 (1971); *Silkwood v. Kerr-Magee Corp.*, 460 F. Supp. 399 (W.D. Okl. 1978), *aff'd*, 637 F.2d 743 (10th Cir. 1980), *cert. denied*, 102 S.Ct. 132 (1981); *Murphy v. Mt. Carmel High School*, 543 F.2d 1189, 1192 n.1 (7th Cir. 1976); *Western Telecasters, Inc. v. California Federation of Labor, AFL-CIO*, 415 F. Supp. 30 (S.D. Cal. 1976). Defendants argue that labor union controversies traditionally have not been considered a proper area for federal intervention and that applying Section 1985(3) in this case opens the door to broad expansion of the classes cognizable under the statute without establishing proper limits. They would construe Section 1985(3) to cover only those classes contemplated as beneficiaries of the Act at its inception, that is classes based on race, religion, political affiliation or beliefs, and, perhaps, gender.

The Supreme Court in *Griffin* specifically refrained from deciding whether a conspiracy motivated by invidiously discriminatory intent *other than racial bias* would be actionable under Section 1985(3). 403 U.S. at 102, n.9. This question has been addressed by lower courts during the ensuing decade. The trend within this circuit appears to be toward expanding the scope of class-based conspiracies which fall within the purview of Section 1985(3). *Ward v. Connor*, 657 F.2d 45 (4th Cir. 1981), *cert. denied*, 50 U.S.L.W. 3570 (Jan. 18, 1982); *Hodgin v. Jefferson*, 447 F. Supp. 804, 808 (D. Md. 1978) (Northrop, J.)

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[2] Preliminarily defendants assert that the amended complaint fails to allege facts sufficient for a finding that the individually named plaintiffs are members of a class of non-union employees. Plaintiffs respond that the allegations in the amended complaint clearly state that "Daniel employees are not and historically never have been, represented by any labor union or unincorporated association." The Court finds these allegations sufficient under Rule 8(a), Fed.R.Civ.P.

The fifth circuit, in a case similar to the one at bar, considered Section 1985(3) claims by a construction company and two of its employees against defendants who allegedly attacked plaintiff's construction site because plaintiffs were not union affiliated. *Scott v. Moore*, 640 F.2d 708 (5th Cir. 1981), *aff'g*, 461 F. Supp. 224 (E.D. Tex. 1978), *rehearing en banc granted*, 656 F.2d 108 (Aug. 31, 1981). There, in an opinion which this Court finds pursuasive, Judge Clark noted that no post Griffin decision by a circuit court had limited the scope of the statute to racially motivate conspiracies. The court found inclusion of suits brought under Section 1985(3), based on discrimination against a "non-union class" to be consistent with the language of the statute and with its legislative history.[3] *Id.* at 718-20. *See Local No. 1 (ACA), Broadcast Employees of International Brotherhood of Teamsters, etc. v. International Brotherhood of Teamsters, etc.*, 419 F. Supp. 263, 275-77 (E.D. Pa. 1976), *aff'd in part and rev'd in part on other grounds*, 614 F.2d 846 (3d Cir. 1980). This Court finds the decision in *Western Telecasters, Inc. v. California Federation of Labor, AFL-CIO*, 415 F. Supp. 30 (S.D. Cal. 1976), holding that the animus behind the conspirator's action in a Section 1985(3) action must be akin to racial bias, not controlling in the instant action. *Silkwood v. Kerr-Magee*

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[3] The remarks of Senator Edmunds, made during the debate preceding the passage of the Civil Rights Act of 1871 are widely quoted by courts attempting to delineate the scope of the Act:

> We do not undertake in this bill to interfere with what might be called a private conspiracy growing out of a neighborhood feud of one man or set of men against another to prevent one [from] getting indictment in the State courts against men for burning down his bar; but, if in a case like this, it should appear that this conspiracy was formed against this man because he was a Catholic, or because he was a Methodist, or because he was a Vermonter . . . then this section could reach it.

Cong. Globe, 42nd Cong., 1st Sess. 567 (1871). *See Griffin*, 403 U.S. at 102, n.9; *Ward, supra*, 657 F.2d at 47; *Scott, supra*, 640 F.2d at 720.

Corp., 460 F. Supp. 399 (W.D. Okl. 1978), *aff'd*, 637 F.2d 743 (10th Cir. 1980), *cert. denied*, 102 S.Ct. 132 (1981), can be distinguished in that there the court found the motivating animus was directed against Karen Silkwood personally rather than against plaintiffs as members of a particular class.

The plaintiffs here, non-union employees and their employer constitute a clearly cognizable and easily identifiable group. The class is not so large and amorphous that its members are indistinguishable from the public at large and its members share a common characteristic beyond simply being victims of the defendants' conspiratorial conduct. *See Scott, supra*, 640 F.2d at 720. In light of the numerous cases recently applying Section 1985(3) beyond race-based animus to classes characterized by gender, religion, occupation and political affiliation, the Court finds no rational grounds for denying application of the statute to the clearly definable, historically recognized, political affiliation of non-union laborers and employers.[4] Thus, the Court holds that claimed discrimination against non-union laborers and their employers alleges sufficient class-based animus for the purposes of stating a claim under Section 1985(3).

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[4] Recent cases included *Glasson v. Louisville*, 518 F.2d 899 (6th Cir.), *cert. denied*, 423 U.S. 930 (1975) (supporters of political candidate protected); *Smith v. Cherry*, 489 F.2d 1098 (7th Cir. 1973), *cert denied*, 417 U.S. 910 (1974) (losing political candidate and his supporters); *Marlowe v. Fisking Body*, 489 F.2d 1057 (6th Cir. 1973) (victims of religious discrimination); *Cameron v. Brock*, 473 F.2d 608 (6th Cir. 1973) (supporters of political candidate); *Selzer v. Berkowitz*, 459 F. Supp. 347 (E.D.N.Y. 1978) (professors who cooperated with the CIA); *Curran v. Portland Superintending School Committee*, 435 F. Supp. 1063 (D. Me. 1977) (victims of sex discrimination); *Franceschina v. Morgan*, 346 F. Supp. 833 (S.D. Ind. 1972) (persons attempting to furnish advice and assistance to migrant workers).

Protected Right

Having found the requisite class-based animus for an action under Section 1985(3), the Court must identify a source of congressional power by which to reach the alleged conspiracy.

In *Griffin, supra*, the Supreme Court, having found class-based animus motivated by racial bias, set out two constitutional sources of power through which § 1985(3) could reach such a purely private conspiracy; (1) the 13th amendment and (2) Congress' power to protect by appropriate legislation the right of interstate travel.

The complaint in this case clearly charges that a purpose of the conspiracy was to prevent the defendants from traveling from state to state. That this allegation is sufficient to support the plaintiffs' cause of action is clear in light of the Fourth Circuit's opinion in *Ward v. Connor*, 657 F.2d 45, 48 (4th Cir. 1981), *cert. denied*, 50 U.S.L.W. 3570 (Jan. 18, 1982). Defendants assert that the right to travel as protected by Section 1985(3) under *Griffin* extends only to blacks who are denied the right because of racial bias. This Court rejects defendant's attempts to impose a racial-bias restriction under this aspect of the *Griffin* analysis. In *Ward*, the Fourth Circuit had no difficulty in finding that a non-Negro right to travel was protected under Section 1985(3). *Id.* at 48. Likewise, this Court finds that the individually named defendants have properly asserted a Section 1985(3) violation of their right to travel.[5]

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[5] Having found congressional authority to reach the conspiracy under plaintiffs' right to interstate travel, the Court need not consider "the troublesome questions of congressional power under Section 5 of the 14th Amendment" which arises as to plaintiffs' 1st Amendment associational rights claim. *Ward, supra*, 657 F.2d at 48, n.5. Nor will the Court address plaintiffs' asserted rights to gainful employment. *See Murphy v. Mt. Carmel High School*, 543 F.2d 1189 (7th Cir. 1976); *Bellamy v. Mason's Stores, Inc.*, 500 F.2d 504 (4th Cir. 1974).

An additional source of Congressional authority to reach the conduct complained of here can be found in the Commerce Clause, Art. 1, § 8, and in the Congressional power, conferred by clause 18 of that article, to make all laws necessary and proper for carrying out the regulation of commerce among the several states. As set forth in the amended complaint, Daniel is a corporation organized under and by virtue of the laws of South Carolina and is engaged in interstate commerce. Pursaunt to its BG&E contract, valued by plaintiff at approximately $1,000,000, Daniel transports men and goods in interstate commerce from South Carolina to Maryland.

There is no question that the commerce clause authorizes Congress to reach and regulate this type of interstate commerce. The Supreme Court has stated that "the power of Congress to promote interstate commerce also includes the power to regular the local incidents thereof, including local activities in both the State of origin and destination, which might have a substantial and harmful effect upon that commerce." *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 258 (1964); *National Labor Board v. Jones & Laughlin Steel Corporation*, 301 U.S. 1, 13 (1957). It is equally clear that a corporation may assert a violation of its rights under the commerce clause. *See, e.g., Anglo-Chilean Nitrate Sales Corp. v. Oklahoma*, 288 U.S. 218 (1933); *West v. Kansas Natural Gas Co.*, 221 U.S. 229, 235 (1911); *Crutcher v. Kentucky*, 141 U.S. 47 (1891). In light of the analysis above, the Court concludes that all the plaintiffs herein have asserted a claim under Section 1985(3) which is legally and factually sufficient to overcome defendants' motion to dismiss.[6]

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[6] Having found an actionable claim under Section 1985(3), the Court need not consider defendants' argument that no Section 1986 claim for relief will lie if the claim under Section 1985 is not valid. Nor need the Court consider the argument that jurisdiction over the pendent state claims may not be exercised if the federal claims are dismissed.

There is no merit to defendants' claim that the amended complaint makes only conclusory and general allegations and should therefore be dismissed. To the contrary, the complaint specifies the injuries alleged by plaintiffs and provides the date on which the injuries occurred. The complaint clearly satisfies both the requirements of Rule 8, Fed.R.Civ.P., and the judicial standards of specificity established for actions alleging a conspiracy to violate civil rights. *See, e.g., Ostrer v. R. Aronwald*, 567 F.2d 551 (2d Cir. 1977); *Rende v. Rizzo*, 418 F. Supp. 96 (E.D. Pa. 1976).

Defendants argue that plaintiffs' request for injunctive relief is barred under 29 U.S.C. § 105, which prevents courts of the United States from issuing injunctions in certain cases involving labor disputes. 29 U.S.C. § 107(a), however, specifically permits a federal court to issue injunctive relief where it finds "that unlawful acts have been threatened and will be committed unless restrained." Here, acts of violence are clearly alleged. Additionally, an injunction by a federal court is prohibited under Section 105 only in the case of a conspiracy to commit acts enumerated in Section 104, none of which is clearly shown to exist here.

Finally, defendants' argument that the National Labor Relations Act preempts plaintiffs' claims under 42 U.S.C. § 1985(3) is without merit because that Act is concerned with preemption of state law rather that preemption of alternative bases for relief under federal law and is, therefore, inapplicable to plaintiffs' civil rights claim. *See, Sears, Roebuck & Company v. San Diego County District Council of Carpenters*, 436 U.S. 180 (1979); *Farmer v. United Brotherhood of Carpenters & Joiners of America, Local 25*, 430 U.S. 290, 298 (1977); *Paca v. Sipes*, 386 U.S. 171 (1967).

For the reasons stated herein, it is this 1st day of April, 1982, by the United States District Court for the District of Maryland,

ORDERED:

1. That the motion by defendants to dismiss is DENIED; and

2. That the Clerk will mail copies of this Memorandum and Order to all counsel of record.

/s/ Norman P. Ramsey
NORMAN P. RAMSEY
United States District Judge